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IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

February Term 1915

PACIFIC PHONOGRAPH COMPANY,	}
Appellant,	
VS.	
SEARCHLIGHT HORN COMPANY,	
Appellee.	

BRIEF FOR APPELLEE.

JOHN H. MILLER,
Attorney for Appellee.

Filed this.....day of March, 1915.

Filed

FRANK D. MONCKTON, Clerk.

MAR 13 1915

By.....Deputy Clerk.

F. D. Monckton,
Clerk.

No. 2518

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<i>Appellant,</i>	

VS.

SEARCHLIGHT HORN COMPANY,	}
<i>Appellee.</i>	

BRIEF FOR APPELLEE.

This case involves substantially the same points as the companion case of *Sherman Clay & Company v. Searchlight Horn Company*, No. 2519, in this court. The difference between the two cases is substantially a matter of names. The appellant is the Pacific Phonograph Company, who is the Pacific Coast distributing agent of Thomas A. Edison, Inc., located in New Jersey. Neither of said companies is a manufacturer of the infringing horns. The Edison Company purchased the infring-

ing horns from sundry unknown and unnamed manufacturing companies in the Eastern States and delivered them to the Pacific Phonograph Company, their Pacific Coast agent. This Pacific Phonograph Company in turn sold the horns to retail dealers throughout the Pacific Coast, and these retail dealers in turn sold them to the ultimate users. These facts place the Pacific Phonograph Company in the same category as Sherman Clay & Co., and Thomas A. Edison in the same category as the Victor Talking Machine Co. in case No. 2519.

A preliminary injunction was granted by the lower court and affirmed on appeal to this court (214 Fed. Rep. 257). All the matters stated in our brief in the Sherman Clay & Co. case with respect to the setting of the case for trial and its continuance are true of the Pacific Phonograph case. The same stipulation entered into in the Sherman Clay & Co. case was entered into in the Pacific Phonograph case, and appears at pages 53-4 of the record herein, the same having been signed by Miller & White, as attorneys for plaintiff, and J. E. Bull, Dan Hadsell and N. A. Acker, as attorneys for defendant. In fine, the Sherman Clay & Co. case and the Pacific Phonograph Co. case are proceeding *pari passu* as one and the same controversy.

We have already filed a brief in the Sherman Clay & Co. case, No. 2519, and desire that the same

be taken and considered by the court as our brief on the merits in this Pacific Phonograph case, No. 2518.

Dated, San Francisco,
March 12, 1915.

Respectfully submitted,

JOHN H. MILLER,

Attorney for Appellee.